

### **REMARKS/ARGUMENTS**

Claims 1-31 are pending in the application. Claims 1-5, 11-12, 18, 20-21, 23-24, and 28-31 are presently amended.

The Applicant has made clarifying amendments to independent claims 1, 11, 20, 29, 30, and 31 to include the additional features that the connection oriented signalling channel is established for transmitting the initiation request and that the mobile station activates a bearer for establishing a push session in response to the initiation request over the newly established connection oriented signalling channel. Basis for this can be found throughout the specification as filed, for example at page 4, line 19 – page 5, line 12; page 5, lines 26 – 28; page 6, lines 26 – 28; and original claims 4 and 9. The Applicant has also made clarifying amendments to dependent claims 2-5, 12, 18, 21, 23, 24, and 28. No admission or representation is made by the present argument other than that explicitly provided herein.

### **The invention**

As noted at page 1, line 29 - page 2, line 4 of the specification as filed, one of the problems addressed by the application is establishing a push session when an active "push" bearer is not available. An example of a push bearer is a GPRS PDP context, which is a shared connection resource for delivery of packet switched data. Such a bearer may not be available if the mobile station has its GPRS capability switched off, for example to save battery life. In this case, it is not possible to use this connection resource or bearer to send the push information, nor is it possible to signal the mobile to establish a push session using this bearer. Therefore another method is required in order to alert the mobile to the awaiting push information, and to establish an appropriate bearer for receiving this. As noted in the present application, the known method for achieving this is to send the mobile a session initiation request (SIR) using an SMS connection resource or bearer. However there is considerable delay involved in sending the SIR using this method, and furthermore the problem of "racing" can occur in which a number of SIRs back up and are then all sent to the mobile when it re-establishes its SMS connection after a period of unavailability.

The claimed subject matter includes establishing a connection oriented signalling channel over which to send the SIRs. An example of a connection oriented signalling channel is the USSD channel in GSM based networks. This provides a faster delivery of an SIR to the mobile. Furthermore, the problem of backed up SIRs can be avoided as the connection oriented nature of the channel means that if the mobile does not establish a USSD or similar connection, the push application can be notified and stop sending SIRs until a USSD connection can be established. Once an SIR is delivered in this way, the mobile then activates a suitable bearer (e.g., GPRS PDP context) with which to establish the push session. Thus, in the absence of a suitable bearer for SIR signalling, the claimed subject matter provides a connection oriented solution which aims to overcome the above mentioned problems with the connectionless SMS method.

**Claims 5 and 24 Rejected Under 35 U.S.C. § 112, Second Paragraph**

Claims 5 and 24 presently stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The Examiner contends that the term “immediately” is a relative term, which renders the claim indefinite. Claims 5 and 24 have been amended to delete the term “immediately.” Withdrawal of the rejection is respectfully requested.

**Claims 1, 4, 10, 11, 14 and 19 Rejected Under 35 U.S.C. § 102(b)**

Claims 1, 4, 10, 11, 14 and 19 presently stand rejected under 35 U.S.C. § 102(b) as being anticipated by WAP Push Architectural Overview (WAP-250-PushArchOverview-20010703-p), hereinafter referred to as “Reference 1.” A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference (MPEP §2131). Applicant respectfully submits that the cited art fails to disclose all of the elements recited in the claims.

The claims as presently amended are directed to a method for initiating a Wireless Access Protocol (WAP) push session to push information from a push proxy gateway to a mobile station in a wireless communication network. The method comprises transmitting an initiation request to the mobile station by establishing a connection-oriented signalling

channel between the network and the mobile station and using said channel to transmit said request such that said mobile station activates a bearer for establishing a push session in response to the initiation request towards the push proxy gateway to permit the push proxy gateway to push information to the mobile station using the activated bearer.

Reference 1 fails to teach or suggest the establishment of a connection oriented signalling channel for the delivery of push session initiation requests (SIRs). In contrast, the reference actually teaches away from the claimed subject matter by explicitly reciting the prior art approach. Reference 1 states, at section 8.3, last paragraph:

The SIR is typically sent to the client using connectionless push (provided by OTA-WSP) independent of whether the client will use OTA-WSP or OTA-HTTP when it subsequently contacts the PPG. Attention has been paid to ensure that the SIR is compact enough to fit into a single SMS in the normal case. SMS is available in most current mobile networks, provides a means to use a well-known client address (MSISDN) and provides transport level reliability (i.e. provides good reliability also when connectionless push is used). (emphasis added)

Reference 1 states, as emphasized above, that the SIR is sent using SMS. SMS is the prior art method of delivering an SIR. SMS is not a connection oriented channel, but a connectionless push, having the disadvantage that there is considerable delay involved in sending the SIR using SMS, and the problem of "racing" can occur in which a number of SIRs back up and then are all sent to the mobile when it re-establishes its SMS connection after a period of unavailability. This is detailed in the background section of the present application, as originally filed.

The claimed subject matter, which includes the establishment of a connection oriented signalling channel for the delivery of push session initiation requests, provides faster delivery of an SIR to a mobile device. Furthermore, the problem of backed up SIRs can be avoided as the connection oriented nature of the channel means that if the mobile does not establish a USSD or similar connection, the push application can be notified and stop sending SIRs until a USSD connection can be established. Once an SIR is delivered in this way, the mobile then activates a suitable bearer with which to establish the push session. Thus, in the absence of a suitable bearer for SIR signalling, the claimed subject matter provides a connection oriented solution which aims to overcome the above mentioned problems with the connectionless SMS method detailed by Reference 1.

For at least these reasons, Claims 1, 4, 10, 11, 14 and 19 should be allowed over Reference 1. Withdrawal of the rejection is respectfully requested.

Claims 2-3, 5-9, 12-13, 15-18, and 20-31 Rejected Under 35 U.S.C. § 103(a)

The Examiner has rejected claims 6-8, 15-17, 20, 23, and 25-27 under 35 U.S.C. § 103(a) as being obvious over Reference 1 in view of WAP Over GSM USSD (WAP-204-WAOverGSMUSSD-20010730-a), published by the Wireless Application Protocol Forum ("Reference 2"). The Examiner further rejected claims 3, 5, and 13 under 35 U.S.C. § 103(a) as being obvious over Reference 1 in view of Push OTA Protocol (WAP-235-PushOTA-20010425-a), published by the Wireless Application Protocol Forum ("Reference 3"). The Examiner further rejected claims 22 and 24 under 35 U.S.C. § 103(a) as being obvious over Reference 1 in view of Reference 2 and in further view of Reference 3. The Examiner further rejected claims 2 and 12 under 35 U.S.C. § 103(a) as being obvious over Reference 1 in view of Turner (An OSI Solution to III Messaging. Library Hi Tech, Vol. 8, No. 4, 1990, pp. 73-82 ("Turner"). The Examiner further rejected claims 9 and 18 under 35 U.S.C. § 103(a) as being obvious over References 1 and 2 and further in view of Livari et al. (US Pub. No. 2005/0020234 A1)("Livari"). The Examiner further rejected claim 21 under 35 U.S.C. § 103(a) as being obvious over Reference 1 in view of Reference 2 and further in view of Turner. The Examiner further rejected claim 28 under 35 U.S.C. § 103(a) as being obvious over Reference 1 and Reference 2 in view of Turner and further in view of Livari. The Examiner further rejected claims 29-30 under 35 U.S.C. § 103(a) as being obvious over Reference 1 in view of Zhigang (US Pub. No. 20050014489)("Zhigang"). The Examiner further rejected claim 31 under 35 U.S.C. § 103(a) as being obvious over Reference 1 in view of Reference 2 and further in view of Zhigang.

In order to establish a prima facie case of obviousness, four basic elements must be met. The Examiner must provide: (1) one or more references that were available to the inventor, (2) that provides some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine the reference teachings, (3) there must be a reasonable expectation of success and (4) the prior art reference must teach or suggest all

the claim limitations. Applicant respectfully submits that the cited references when viewed alone or combination fail to teach or suggest the subject matter defined by the amended claims.

It is submitted that none of the cited references address the problem of the present application, namely establishing a push session when an active push bearer is not available, and none of the cited references disclose or suggest the feature of the establishment of a connection oriented signalling channel for the delivery of push session initiation requests. It is believed that the pending independent claims define an invention which is inventive over the content of the cited prior art references and that the application is therefore in order for allowance. The dependent claims depend either directly or indirectly from the independent claims, recite further patentable subject matter, and are believed patentable for the same reasons.

Further, with regard to the determination of obviousness under 35 U.S.C. § 103, the Supreme Court has recently stated that:

Although common sense directs one to look with care at a patent application that claims as innovation the combination of two known devices according to their established functions, *it can be important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does*. This is so because inventions in most, if not all, instances rely on building blocks long since uncovered, and claimed discoveries almost of necessity will be combinations of what, in some sense, is already known.

*KSR International Co. v. Teleflex Inc.*, 550 U.S. \_\_\_, \_\_\_, 2007 WL 1237837 (2007), (Slip Opinion at 14-15) (emphasis added). In addition, the Supreme Court also stated that:

Often, it will be necessary for a court to look to interrelated teachings of multiple patents; the effects of demands known to the design community or present in the marketplace; and the background knowledge possessed by a person having ordinary skill in the art, all in order to determine whether there was an apparent reason to combine the known elements in the fashion claimed by the patent at issue. To facilitate review, *this analysis should be made explicit*. See *In re Kahn*, 441 F.3d 977, 988 (Fed Cir. 2006) (“[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, *there must be some articulated reasoning with some rational underpinnings to support the legal conclusion of obviousness*”).

*Id.*, at \_\_\_\_ (Slip Opinion at 14) (emphasis added). The Supreme Court included an extended discussion reciting the nature of the inventions disclosed in the prior art and then several paragraphs identifying the rationale and reasons that the cited art could be combined and why one skilled in the art would make such a combination. *Id.*, at \_\_\_\_ (Slip Opinion at 3-6, 20-22).

With regard to combining known elements of an invention, the Supreme Court further stated that, “[a] patent composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art.” *Id.*, at \_\_\_\_ (Slip Opinion at 14). This holding comports with *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) which held that, although some of the cited references, individually, may have some of the claimed inventions’ features, “one cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to depreciate the claimed invention.” *Id.* at 1075. Instead, to reach the proper conclusion under §103:

the decision maker must step backward in time and into the shoes worn by [a person having ordinary skill in the art] when the invention was unknown and just before it was made. In light of *all* the evidence, the decision maker must then determine whether...the claimed invention as a whole would have been obvious at *that* time to *that* person.

*Id.* at 1073-74.

In the instant case, it is noted that the Examiner has relied on 10 distinct combinations of 6 separate references in order to reject all of the claims of the pending application. This is a hallmark indication of the impermissible use of hindsight. It appears that the Examiner has used the Applicant’s description as a guide to piece together the various prior art references in an attempt to reconstruct the Applicant’s invention using hindsight as the primary tool. This approach is not permissible.

Furthermore, it is respectfully submitted that the Examiner has not properly supported the rejections under 35 U.S.C. § 103(a) and under *KSR International*. In the Office Action, the Examiner has merely identified a list of selected elements recited in the present application and located various references, wherein the Examiner contends similar elements are disclosed. As set forth above, Applicants dispute that the cited combinations actually teach or disclose all of the elements recited in the claims of the present application. Further, the Examiner has not “made explicit” the reason such

references would, or could, be combined as suggested. That is, the Examiner has, after identifying a number of elements in the prior art, repeatedly stated that, “it would have been obvious for one skilled in the art at the time of invention to combine the teachings of....”. However, merely identifying specific elements that various references disclose, stating that they may be combined, and providing a conclusory statement that the cited art may be combined is not an “articulated reasoning with some rational underpinnings” sufficient to support the conclusion of obviousness. That is, the Examiner has failed to describe the “interrelated teachings of multiple patents; the effects of demands known to the design community or present in the marketplace; and the background knowledge possessed by a person having ordinary skill in the art.” Moreover, as set forth by the Court in *KSR International*, a “patent composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art.” In fact, each of the single sentence explanations provided by the Examiner are the type of “mere conclusory statement” that the *KSR International* Court held cannot properly support a rejection under 35 U.S.C. § 103.

Moreover, given that the Examiner has provided only single conclusory statements regarding each cited combination of references, the Examiner has failed to identify motivations for combining the references and has failed to discuss how such a combination would be accomplished in such a manner as to disclose the invention recited in the present application. Applicants reserve the right to address any problems with the proposed combinations cited should the Examiner present an articulated reasoning with some rational underpinnings sufficient to support the conclusion of obviousness as required by *KSR International*.

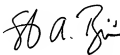
Accordingly, as these references fail to teach or suggest each element of the rejected claims, as these references cannot be combined as suggested by the Examiner, and as the Examiner has failed to properly support the rejection under 35 U.S.C. § 103(a) and under *KSR International*, the rejection of Claims 2-3, 5-9, 12-13, 15-18, and 20-31 under 35 U.S.C. § 103(a) should be withdrawn. Withdrawal of the rejection is respectfully requested.

### CONCLUSION

In view of the remarks above, Applicants respectfully submit that the application is in proper form for issuance of a Notice of Allowance and such action is requested at an early date.

No fee is believed to be required, however, if such a fee is due, please charge any additional fee or credit any overpayment to Eckert Seamans Cherin & Mellott, LLC Deposit Account No. 02-2556.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "S.A. Bucchianeri".

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